

UNITED STATES DISTRICT COURT
THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: DAVOL, INC./C.R. BARD,
INC., POLYPROPYLENE HERNIA
MESH PRODUCTS LIABILITY
LITIGATION

Case No. 2:18-md-2846

Judge Edmund A. Sargus, Jr.
Magistrate Judge Kimberly A. Jolson

This document relates to:
Kilgore v. Davol, Inc. et al.
Case No. 2:21-cv-3331

ORDER

This matter is before the Court on Plaintiff's Motion to Substitute Party. (ECF No. 5.) Rule 25 provides that, "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party." Fed. R. Civ. P. 25(a)(1). "A motion for substitution may be made by any party or by the decedent's successor or representative." *Id.*

Plaintiff Loraine Kilgore passed away on July 9, 2018. (ECF No. 5.) Ms. Kilgore's son, Christopher Simpson, is the surviving next of kin. (*Id.*) Plaintiff now moves for the substitution of Mr. Simpson as the proper plaintiff. (*Id.*) Plaintiff filed a supplement to the Motion explaining that Mr. Simpson is Ms. Kilgore's sole heir under Georgia law. (ECF No. 7.) However, under Georgia law, in the case of the death of a plaintiff, a cause of action "shall survive to the *personal representative* of the deceased plaintiff." O.C.G.A. § 9-2-41 (emphasis added). A decedent's tort claim "may be pursued by the estate's personal representative, but not by heirs or a devisee under [a] will." *Matter of Harman*, 623 B.R. 654, 659 (Bankr. N.D. Ga. 2020), *reconsideration denied*, No. AP 11-05534-LRC, 2021 WL 726065 (Bankr. N.D. Ga. Feb. 24, 2021).

Because neither the Motion nor the supplement has made any allegation that Mr. Simpson is a representative of Ms. Kilgore's estate, and an heir is not entitled to pursue a decedent's tort

claim under Georgia law, Plaintiff's Motion to Substitute (ECF No. 5) is **DENIED** without prejudice.

IT IS SO ORDERED.

11/14/2022
DATE

s/Edmund A. Sargus, Jr.
EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE